

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR.

O R D E R

Rakesh Sood v. Union of India & Ors.

S.B.CIVIL WRIT PETITION NO.3489/2005
under Article 226 of the
Constitution of India.

Date of Order : 29th March, 2006

P R E S E N T
HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. K.K.Shah, for the petitioner.
Mr. V.K.mathur, for the respondents.

BY THE COURT :

The petitioner, a Deputy Company Commandant with Border Security Force was compulsorily retired from services w.e.f. 30.9.2004 by the authority competent exercising powers under Rule 21 of the Border Security Force Rules.

By a letter dated 15.11.2004 the petitioner was called for to deposit certain outstanding dues against him. The dues said to be outstanding were denied by the petitioner under a communication dated 18.11.2004 except the car loan advance for that a willingness was shown by the petitioner to deposit the same with interest in monthly instalments by effecting recovery from his pension. The respondents reiterated the dues outstanding against the petitioner in a tune of Rs.3,59,529/- by a communication dated 29.1.2005 and called for the petitioner to deposit the same. The

dues as stated in the communication dated 29.1.2005 are as follows:-

01.MCA(P)	:Rs. 63,600/-
02.MCA(F)	:Rs. 62,238/-
03.Audit Recovery	:Rs. 21,954/-
04.Mess Recovery	:Rs. 7,176/-
	(Already Recovered)
05.Pay Recovery	:Rs. 274/-
06.Pay recovery for EOL, HPL & over paid TA/DA	:Rs.1,78,407/-
07.CGEIS Subs	:Rs. 1,680/-
08.Recovery of PNB Loan	:Rs. 24,200/-
Total	:Rs.3,59,529/- =====

with reference to the communication dated 29.1.2005 the petitioner by his communication dated 13.5.2005 asserted that no amount except car loan advance is outstanding. The petitioner by same communication also made a request to release his pension and its commuted value at earliest.

The Accounts Officer, Directorate of Border Security Force, Pay & Accounts Division, while requesting to the Pay & Accounts Officer, Central Pension Accounting Office by the communication dated 21.4.2005 to make arrangement for payment of pension and the commuted value of pension to the petitioner also informed about withholding of the sum of Rs.1,52,935/- against over paid government dues against the petitioner. The Pay & Accounts Division, Directorate of Border Security Force, under a

communication dated 26.5.2005 paid to the petitioner a sum of Rs.48,061/- against final payment of DCRG/CGEgIS/Leave Encashment claims after making a recovery of the sum of Rs,.2,32,377/- from DCRG on account of over payment of pay, allowance/government dues as per advice of Accounts Officer (Pension & Gratuity Section), Pay & Accounts Division, Border Security Force.

Being aggrieved by the same the petitioner preferred the instant petition for writ claiming the relief as under:-

“this writ petition may kindly be allowed with costs and by issuance of an appropriate writ, order or direction the impugned recovery orders annex-12 dt.21.4.05 and annex-13 dt.26.5.05 regarding recovery from commuted pension and DCRG may please be quashed and set aside. It is further prayed that the petitioner may kindly be paid entitled value of commuted pension and gratuity in full with interest @ 15% per annum from 1.10.04 till date of payment.”

In reply to the writ petition the respondents while reiterating the demand made by them also included a sum of Rs.43,773/- sought to be recovered from the petitioner as a government due under the head of recovery of GPF (subscription). The respondents in their reply detailed the recovery sought to be made by the petitioner as under:-

(a)Motor Car Advance (Principal amount)	:	63,600/-
(b)Interest on car advance	:	62,238/-
(c)Audit recovery (On account of unauthorised air journey)	:	21,954/-
(d)Over payment of salary	:	274/-
(e)CGEIS recovery	:	1,680/-
(f)HPL/EOL	:	13,389/-
(g)Recovery of Pay and allowance for EOL/HPL & TA/DA	:	1,78,407/-
(h)Recovery of GPF (subscription)	:	43,773/-
Total	:	<u>Rs.3,85,315/-</u> =====

The respondents asserted that in view of Rule 71 of the Central Civil Services (Pension) Rules, 1972 (hereinafter referred to as “the Rules of 1972”) the government dues are required to be adjusted from the amount of retirement gratuity payable to the government servant.

The petitioner in rejoinder reiterated the averments contained in the writ petition and denied all the demands as made by the respondents except car loan advance. It is pertinent to note that during pendency of the writ petition the respondents released the sum of Rs.1,52,935/- that was earlier withheld from commuted value of pension pertaining to the petitioner, as such the claim made by the petitioner has already been satisfied by the respondents except

the question with regard to entitlement of the petitioner for interest upon the delayed payment of pension and its commuted value. However, the counsel for the petitioner has stressed to examine validity of the other recoveries sought to be made from him. I do not think it appropriate to enter into examination of the validity of recovery sought to be made by the respondents except for the sum which is illegal on face.

Learned counsel for the petitioner at the outset admitted the car loan advance as an amount due against the petitioner, however, urged for a direction for the respondents to recover the same in easy instalments from pension of the petitioner.

Recovery of the Air Fare for Travelling by Air

The validity of recovery sought to be made by the respondents against alleged unauthorised air travel from Jodhpur to Ranchi and vice versa in a tune of Rs.21,954/- is assailed by the petitioner by claiming himself entitled for the same.

The respondents in reply to the writ petition averred that a Central Government employee drawing pay of Rs.12,300/- and above but below Rs.16,400/- may travel by air on tour/transfer at their discretion if the distance involved is more than 500 kms. and journey cannot be performed overnight (ordinarily)

covered between 06:00 P.M. to 08:00 P.M. by a direct train service can claim air travel. The petitioner could have travelled from Jodhpur to Ranchi and vice versa by a over night journey, therefore, he was not entitled for air fare as drawn by him.

Counsel for the respondents, however, failed to satisfy the Court as to how the petitioner could have travelled from Jodhpur to Ranchi and vice versa by undertaking overnight journey. There is no dispute that the distance from Jodhpur to Ranchi is more than 50 kms. and the petitioner was drawing salary above Rs.12,300/- and below Rs.16,400/-, therefore, he was certainly entitled to undertake the air travel. The audit report on basis of which the respondents want to recover air fare from the petitioner mentions that the petitioner has not saved working day, therefore, he was not entitled for air travel. The requirement for entitlement of air travel depends upon the pay of the employee, distance between the two stations and on the time consumed in journey including overnight period. The use of working day is not at all relevant in this regard. In view of it the recovery sought to be made by the respondents in the tune of Rs.21,954/- is totally unauthorised.

Recovery pertaining to over payment of salary in a
tune of Rs.274/-

No details are given by the respondents in their reply to the writ petition with regard to the

amount demanded above. The respondents have simply averred the amount referred above in reply to the writ petition but necessary details are not given. It is also not made clear by the respondents in their reply on what basis they are claiming the sum of Rs.274/- against over payment of salary. Similarly, no details are given by the respondents against demand made by them for the sum of Rs.1680/- as CGEIS recovery.

The Recovery of dues against over payment of pay for extra ordinary leave, half pay leave etc.

The recovery of pay and allowance for extra ordinary leave/half pay leave travelling allowance/dearness allowance. A huge amount of Rs.13,389/- and 1,78,407/- is demanded by the respondents against extra ordinary leave and half pay leave availed by the petitioner.

It is well settled that a government servant is not entitled for payment of pay pertaining to extra ordinary leave. There is no dispute that only a half pay is required to be given against sanctioned half pay leave. The respondents have stated in reply to the writ petition that the pay for extra ordinary leave and half pay leave was given to the petitioner and that amount is required to be recovered. The details of the period pertaining to which extra ordinary leave and half pay leave were sanctioned to the petitioner

is given by the respondents in document Anx.R/8 and R/9. According to counsel for the petitioner the period shown in documents referred above is quite old one. A person in normal course cannot be expected to have any remembrance about such payment related to remote years, therefore, respondents should be restrained from making recovery of any amount under this head too.

I am not inclined to enter into this question as it involves serious questions of fact and the issues that can be settled only by examining leave account and the pay account record of the petitioner. The petitioner, therefore, is required to submit his grievance to the competent authorities of the respondents to examine the issue and to redress the grievance raised. The petitioner was restrained from service on 30.9.2004 but the respondents detained his pension and its commuted value for a period of about 16 months without any just and valid reason. The petitioner is certainly entitled to earn interest on the amount paid to him belated.

Accordingly, this petition for writ is disposed of with a direction to the respondents to determine and pay interest to the petitioner @ 8% per annum upon the delayed payment of pension and its commuted value. The respondents shall not recover air travel fare from the petitioner against the air travel

from Jodhpur to Ranchi and vice versa. However, the respondents are entitled to effect recovery of the car loan advance from pension of the petitioner in easy instalments. With regard to other amounts said to be due and sought to be recovered, the petitioner may submit a representation to the competent authority of the respondents within one month from today for redressal of his grievance and if the petitioner submit any representation, the competent authority shall decide the same by a speaking and reasoned order within a period of one month from the date of its receipt. The competent authority shall also allow an opportunity of personal hearing to the petitioner and also permit him to inspect the leave account and pay account concern if he demands for that.

No order as to costs.

(GOVIND MATHUR),J.

kkm/ps.